

From: Gilbert, Joel </O=BALCH/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JGILBERT>
Sent: Thursday, April 14, 2016 9:06 AM
To: 'David Roberson' <droberson@drummondco.com>; 'mikethompson@thompsoncontractor.com'; 'Van Richey (vrichey@american-usa.com)'; 'Godfrey, Mike (Environmental)' <JGODFREY@southernco.com>; Susan Comensky <SCOMENSK@southernco.com>
Subject: AJE Update on Community Outreach / EPA Tarrant Activities / Etc. (Attorney Client Communication / Privileged & Confidential)
Attach: Final results.pdf; EPA March 30 Letter to City.pdf; Tarrant March 31 Letter.pdf; Strada map.pdf; GASP UAB Superfund research email.pdf; Clean-Air-Initiative-Brochure-FINAL.pdf; Shelby Sessions Palmer Letter to EPA.pdf; EPA Response to Federal Delegation Letter.pdf

Attorney Client Communication / Privileged & Confidential

I apologize in advance for the length of this email. Although it has been less than a month since my last update on March 22nd, there has been a lot going on I wanted to make sure everyone was up-to-date on community outreach / EPA activities / other developments.

Community Outreach Activities

Get Smart and the local NAACP have met with numerous pastors in Tarrant within the last several weeks. In particular, two churches, Rushing Springs Baptist Church and Lily Baptist Church, are helping these groups reach out to other churches in the area and are very supportive of Get Smart. Rushing Springs held a church leadership meeting for the churches in the area so that Get Smart could give a presentation on EPA activities and their impact to Tarrant and Inglenook. At that meeting, Get Smart provided the pastors with information to hand out to their members. In addition, Rushing Springs requested 100 Get Smart flyers (and made additional copies on their own) to hand out during their weekly ministry activities in the Tarrant/Inglenook communities.

In addition, Get Smart was invited by the City to the Tarrant Easter Egg hunt on March 26th to hand out Get Smart information. Tarrant residents were very receptive of Get Smart and consistently stated that they did not support the EPA investigation.

The NAACP has been working diligently in the Inglenook community and has been attending various neighborhood meetings. In addition, the NAACP also attended Inglenook Neighborhood Association's Community Day on March 26th to hand out Get Smart information and speak with those in the community about EPA's investigation and what it could mean for the Inglenook neighborhood.

Over the past several weeks, Get Smart has been following up the Tarrant residents that answered the earlier questionnaires to obtain affidavits documenting their experience with EPA during the sampling of their properties. Get Smart has collected approximately 17 affidavits. Get Smart plans to provide several of the affidavits to local and state representatives in the near future for their use.

Finally, Get Smart has been going door-to-door throughout the area targeted for Phase II sampling by EPA to update them on some of the tactics EPA used in obtaining access to the resident's yards during the Phase I sampling as well as re-educating them on why EPA is in the area and the impacts EPA's actions could potentially have on their neighborhood and the City of Tarrant.

City of Tarrant / EPA Investigation

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2:17-CR-00419-AKK-TMP
06/25/18 Jury Trial

DEFENDANT EXHIBIT 1224

Balch-ORF-PRIV-003429

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DX 1224 - 001

There have been several developments with regard to EPA's investigation of Tarrant since my last update.

On March 30th, EPA responded to Mayor Tuck's February 29th letter which provided the City of Tarrant's concerns with EPA's SAP/QAPP (see attached "EPA March 30 Letter to City") and the results of the Phase I sampling (see attached "Final results"). **Per the sampling report, all sample results are below EPA removal management levels (RML).**

Obviously, this is a very good outcome. However, of note, EPA did not include the background sampling results taken in Norwood and Kingston that EPA intended to use to compare the Tarrant samples. As such, while the Phase I results show they are below the respective RMLs and are encouraging, we do not know how the Phase I samples compare to the samples EPA took to allegedly establish background levels.

The City of Tarrant responded on March 31st to EPA's letter requesting the background sampling data and providing that if EPA intends to move forward with the South Tarrant investigation, then the City would like to meet to understand EPA's proposed next steps but only after it has had time to review the background sampling data to ensure the City has a complete picture of all the data EPA is using to determine further investigation is necessary (see attached "Tarrant March 31st Letter"). EPA has not responded to the City's latest correspondence; however, in the last few days, we have been told from various sources in contact with EPA that EPA intends to begin sampling of the Phase II area within the next few weeks. In addition, it is also our understanding that the results of the samples taken in Norwood and Kingston by EPA to allegedly establish background for the Tarrant investigation came back very high and EPA is now going to use these results to begin investigating these areas for inclusion in the North Birmingham Superfund Site. While we do not have confirmation of this information, the fact EPA has not provided the City of Tarrant with the sampling results of these areas, seems to support this probability. For your benefit, I have attached a STRADA map providing the original Robinwood background study area, the Gasp Petition area currently under investigation by EPA, as well as the Norwood and Kingston neighborhoods recently sampled by EPA.

UAB Establishment of a Superfund Research Center

In the course of reviewing various documents provided by EPA related to the North Birmingham Superfund site, we discovered a recent string of emails (January 2016) wherein GASP notified EPA that the UAB School of Medicine is in the process of establishing a Superfund Research Center to perform research to specifically address the challenges /issues facing the residents in North Birmingham and surrounding areas. Specifically, the email provides that Dr. Veena Antony, a pulmonologist in the Division of Pulmonary, Allergy & Critical Care Medicine at UAB, will be heading up the research center. Additionally, the email provides that Dr. Antony is applying for a 2016 NIEHS grant for the center and asks for EPA's support of this grant request. (see attached "GASP UAB Superfund research email").

Out of curiosity, I did a little research to see what would come up when I searched for Dr. Antony and discovered the following:

Per an al.com article (http://blog.al.com/spotnews/2012/05/uab_initiative_seeks_clean_air.html), in 2012, UAB announced that it was launching a Clean Air Initiative wherein it would be joining forces with a coalition of local groups to address air quality in the Birmingham metro area. The Initiative's goal was to identify and address pollution-related health problems of people living near smokestacks and in heavily industrialized areas. Specifically, the initiative would be studying the effects of air pollution by taking breath samples of people who live in Birmingham communities close to sources of pollution.

Of note, the article infers that Dr. Antony was specifically recruited to UAB to head up this initiative as well as perform research at the local level related to the health impacts associated with the **inhalation of coal dust**. In addition, the article noted that the "coalition of groups" working with UAB in this initiative included GASP, the American Lung Association and the **Southern Environmental Law Center (SELC)**. The article goes on to provide that **the Clean Air Initiative was being made possible through a \$100,000 seed grant from Dell and F. Dixon Brooke Jr., and matching money from the UAB School of Medicine**. The article concludes by providing that the Initiative was planning a day-long symposium on September 21, 2012, on air quality in Birmingham and its effects. I have attached a copy of the agenda for the symposium (see attached "Clean Air Initiative Brochure"). Per the agenda, Kirsten Bryant (GASP) was a panel member and speaker, as well as, Dr. Michelle Fanucchi (Associate Professor and Interim Chair, UAB Department of

Environmental Health Sciences, School of Public Health), who has been working with GASP on the North Birmingham matter. The materials from the symposium were posted on the internet but are no longer available.

Federal Delegation Activities

Since March 22nd, we have had a couple of meetings with Representative Palmer and his staff concerning EPA activities in Tarrant. Based on these meetings, Rep. Palmer is planning to provide a short presentation to the Congressional Oversight Committee in June (with EPA in attendance) concerning EPA's activities in Tarrant. The presentation will be primarily made up of video interviews with various Tarrant residents, the Mayor of Tarrant and the Superintendent of Tarrant City Schools describing EPA's questionable activities and statements during EPA's Phase I sampling. The information obtained from the affidavits Get Smart has gathered will be used as well. We are currently working with Rep. Palmer's office, the City of Tarrant and Get Smart to develop the information and materials Rep. Palmer has requested for this presentation.

Finally, as you may remember, on February 26th, Senators Shelby and Sessions and Representative Palmer sent a letter to EPA questioning EPA's activities in North Birmingham and their use of air deposition as a theory of CERCLA liability and requested a meeting to discuss these issues (see attached "Shelby Sessions Palmer Letter"). On March 26th, EPA responded (see attached "EPA Response to Federal Delegation Letter"). While EPA did agree to meet with them, not surprisingly, EPA failed to substantively address/answer any of the concerns raised in the letter. As you will see in EPA's response, of particular interest, is EPA claim "they cannot engage in any level of discussions with third parties, including members of Congress ..." concerning EPA's activities in North Birmingham. Also, noteworthy is that EPA cites "facility air emissions...[that] occurred prior to, in absence of or in exceedance of Clean Air Act permits." We are currently working with the Senators' and Rep. Palmer's office on an appropriate response.

if you have any questions regarding any of the above, let me know. Thanks.

Joel



Joel I. Gilbert, Partner, Balch & Bingham LLP
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www.balch.com

Sample ID	ST1-SS-01	ST1-SS-02	ST1-SSD-02	ST1-SS-03	ST1-SS-04	ST1-SS-05	ST1-SS-07	ST1-SS-08	ST1-SS-09	Removal Management Levels (RML)
Property	ST1-01	ST1-02	ST1-02	ST1-05	ST1-04A	ST1-06	ST1-11	ST1-12A	ST1-16	
Date	2/2/2016	2/2/2016	2/2/2016	2/2/2016	2/2/2016	2/2/2016	2/2/2016	2/2/2016	2/2/2016	
Matrix	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	
Type	Field Sample	Field Sample	Field Duplicate	Field Sample	Field Sample	Field Sample	Field Sample	Field Sample	Field Sample	
PAH (ug/kg)										
1-Methylnaphthalene	210 U	230 U	220 U	220 U	200 U	230 U	210 U	210 U	200 U	
2-Methylnaphthalene	210 U	230 U	220 U	220 U	200 U	230 U	210 U	210 U	200 U	
Acenaphthene	210 U	230 U	220 U	220 U	37 J	230 U	210 U	210 U	200 U	
Acenaphthylene	210 U	230 U	220 U	220 U	200 U	230 U	210 U	210 U	200 U	
Anthracene	210 U	230 U	220 U	38 J	79 J	230 U	210 U	210 U	93 J	
Benzo(a)anthracene	59 J	72 J	74 J	150 J	470	98 J	47 J	27 J	570	
Benzo(a)pyrene	63 J	78 J	82 J	160 J	570	110 J	47 J	32 J	470	
Benzo(b)fluoranthene	81 J	140 J	150 J	240 J	980 J	210 J	78 J	53 J	700 J	
Benzo(g,h,i)perylene	37 J	38 J	45 J	79 J	420	82 J	210 U	210 UJ	200	
Benzo(k)fluoranthene	38 J	41 J	63 J	100 J	290 J	97 J	210 U	210 U	330 J	
Chrysene	71 J	100 J	98 J	180 J	530	140 J	53 J	39 J	570	
Dibenz(a,h)anthracene	210 U	230 U	220 U	220 U	140 J	230 U	210 U	210 U	88 J	
Fluoranthene	100 J	130 J	150 J	310	920	170 J	81 J	56 J	890	
Fluorene	210 U	230 U	220 U	220 U	33 J	230 U	210 U	210 U	200 U	
Indeno(1,2,3-cd)pyrene	34 J	37 J	41 J	80 J	390	74 J	210 U	210 U	220	
Naphthalene	210 U	230 U	220 U	220 U	48 J	230 U	210 U	210 U	200 U	
Phenanthrene	54 J	71 J	76 J	190 J	480	89 J	42 J	23 J	350	
Pyrene	88 J	98 J	100 J	220	710	140 J	70 J	40 J	730	
Benzo (a) Pyrene TEQ	186.49	219.31	220.11	319.8	902.2	265.57	176.58	156.94	716	1,600
Metals, Total (mg/kg)										
Arsenic	19 J	17 J	13 J	21 J	16 J	16 J	29 J	22 J	19 J	68
Barium	190 J	150 J	100	300 J	400 J	260 J	150 J	76 J	77 J	46,000
Cadmium	0.53 J	0.5 J	0.41 J	0.76	1.1	1.3	0.54	0.3 J	0.28 J	210
Chromium	72 J	27 J	27	32 J	38 J	39 J	240 J	110 J	19 J	350,000
Lead	130	120	100	180	140	320	120	62	110	400
Mercury	0.096 J	0.14	0.15	0.14	0.1 J	0.47	0.15	0.08 J	0.15	70
Selenium	3.5 J	2.6 J	2 J	2.7 J	2.3 J	2.1 J	4.2	3.1 J	0.7 J	1,200
Silver	1.1 U	1.3 U	1.3 U	1.1 U	0.29 J	0.094 J	0.098 J	1.1 U	1.2 U	1,200

Notes:

TEQ-Toxic Equivalency Quotient-The EPA Uses weighting factors to summarize all Polycyclic Aromatic Hydrocarbon (PAH) which is then expressed as the toxicity of Benzo(a) Pyrene. This is a conservative expression of the total toxicity of all detected

ug/kg-micrograms per kilogram

mg/kg-milligrams per kilogram

J-sample analysis is acceptable, sample is estimated

U-Not Detected in sample

RML- Removal Management Level. Values used by the EPA to determine where action may be necessary to protect human health and/or the environment.

Sample ID	ST1-SS-10	ST1-SS-11	ST1-SSD-11	ST1-SS-12	ST1-SS-13	ST1-SS-14	ST1-SS-15	ST1-SS-16	ST1-SS-17	Removal Management Levels (RML)
Property	ST1-18	ST1-20	ST1-20	ST1-22	ST1-23A	ST1-24	ST1-15A	ST-09A	ST1-10A	
Date	2/3/2016	2/3/2016	2/3/2016	2/3/2016	2/3/2016	2/3/2016	2/3/2016	2/3/2016	2/3/2016	
Matrix	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	
Type	Field Sample	Field Sample	Field Duplicate	Field Sample	Field Sample	Field Sample	Field Sample	Field Sample	Field Sample	
PAH (ug/kg)										
1-Methylnaphthalene	190 U	200 U	200 U	80 J	200 U	230 U	210 U	210 U	210 U	
2-Methylnaphthalene	190 U	200 U	200 U	78 J	200 U	230 U	210 U	28 J	210 U	
Acenaphthene	190 U	200 U	200 U	260 U	200 U	230 U	210 U	210 U	210 U	
Acenaphthylene	190 U	200 U	200 U	260 U	200 U	230 U	210 U	210 U	210 U	
Anthracene	190 U	200 U	34 J	260 U	200 U	230 U	210 U	45 J	210 U	
Benzo(a)anthracene	39 J	130 J	150 J	240 J	120 J	54 J	58 J	470	70 J	
Benzo(a)pyrene	34 J	140 J	150 J	260	140 J	51 J	75 J	320	86 J	
Benzo(b)fluoranthene	47 J	210	250 J	450 J	240 J	110 J	130 J	680 J	150 J	
Benzo(g,h,i)perylene	190 U	76 J	78 J	170 J	79 J	35 J	45 J	180 J	55 J	
Benzo(k)fluoranthene	190 U	79 J	170 J	220 J	110 J	42 J	68 J	340 J	100 J	
Chrysene	43 J	150 J	170 J	320	140 J	70 J	92 J	460	130 J	
Dibenz(a,h)anthracene	190 U	200 U	200 U	62 J	200 U	230 U	210 U	79 J	210 U	
Fluoranthene	68 J	250	330	470	240	94 J	110 J	710	260	
Fluorene	190 U	200 U	200 U	260 U	200 U	230 U	210 U	210 U	210 U	
Indeno(1,2,3-cd)pyrene	190 U	78 J	72 J	160 J	74 J	230 U	40 J	210	53 J	
Naphthalene	190 U	200 U	200 U	50 J	200 U	230 U	210 U	37 J	210 U	
Phenanthrene	52 J	110 J	190 J	260	120 J	58 J	78 J	270	220	
Pyrene	62 J	210	230	370 J	200 J	77 J	85 J	540 J	180 J	
Benzo (a) Pyrene TEQ	148.48	284.09	300.6	412.4	285.9	195.02	204.4	543	220.6	1,600
Metals, Total (mg/kg)										
Arsenic	14 J	11 J	11 J	27 J	15 J	17 J	21 J	14 J	17 J	68
Barium	150 J	160 J	170	450 J	110	220	440	190	250	46,000
Cadmium	0.15 J	0.72	0.76	1.7 J	1.1	0.85	1.3	1.5	0.73	210
Chromium	16 J	21 J	29	24	24	41	53	54	62	350,000
Lead	26	140	150	310	160	110	150	250	140	400
Mercury	0.073 J	0.12	0.13	0.35	0.11 J	0.26	0.25	0.33	0.096 J	70
Selenium	1.1 J	2.2 J	2.3 J	1.9 J	1.8 J	2.7 J	3.4 J	2.4 J	3.2 J	1,200
Silver	1 U	0.12 J	0.089 J	0.3 J	1.1 U	0.73 J	0.19 J	0.1 J	0.98 U	1,200

Notes:

TEQ-Toxic Equivalency Quotient-The EPA Uses weighting factors to summarize all Polycyclic Aromatic Hydrocarbon (PAH) which is then expressed as the toxicity of Benzo(a) Pyrene. This is a conservative expression of the total toxicity of all detected

ug/kg-micrograms per kilogram

mg/kg-milligrams per kilogram

J-sample analysis is acceptable, sample is estimated

U-Not Detected in sample

RML- Removal Management Level. Values used by the EPA to determine where action may be necessary to protect human health and/or the environment.

Sample ID	ST1-SS-18	ST1-SS-19	ST1-SS-20	ST1-SS-21	ST1-SS-22	ST1-SSD-22	ST1-SS-23	ST1-SS-24	ST1-SS-25	Removal Management Levels (RML)
Property	ST1-7A	ST1-03	ST1-08	ST1-25	ST1-19A	ST1-19A	ST1-21A	ST1-26	ST1-17A	
Date	2/3/2016	2/3/2016	2/3/2016	2/3/2016	2/4/2016	2/4/2016	2/4/2016	2/4/2016	2/4/2016	
Matrix	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	Surface Soil	
Type	Field Sample	Field Sample	Field Sample	Field Sample	Field Sample	Field Duplicate	Field Sample	Field Sample	Field Sample	
PAH (ug/kg)										
1-Methylnaphthalene	130 J	210 U	230 U	210 U	220 U	220 U	240 U	210 U	33 J	
2-Methylnaphthalene	120 J	210 U	34 J	210 U	220 U	220 U	240 U	210 U	33 J	
Acenaphthene	230	210 U	230 U	210 U	220 U	220 U	240 U	210 U	220 U	
Acenaphthylene	220 U	210 U	32 J	210 U	220 U	220 U	240 U	210 U	220 U	
Anthracene	410	210 U	48 J	51 J	80 J	58 J	240 U	210 U	61 J	
Benzo(a)anthracene	820	43 J	180 J	170 J	650	450	82 J	210 U	190 J	
Benzo(a)pyrene	670	56 J	170 J	160 J	670	510	91 J	210 U	180 J	
Benzo(b)fluoranthene	1100 J	99 J	230 J	250 J	1200 J	830 J	160 J	210 U	280	
Benzo(g,h,i)perylene	370	210 U	69 J	69 J	420	260	49 J	210 U	78 J	
Benzo(k)fluoranthene	480 J	47 J	120 J	140 J	480 J	410 J	82 J	210 U	140 J	
Chrysene	730	80 J	190 J	200 J	710	490	100 J	210 U	220	
Dibenz(a,h)anthracene	110 J	210 U	230 U	210 U	120 J	84 J	240 U	210 U	220 U	
Fluoranthene	1600	120 J	350	360	1600	1100	160 J	210 U	360	
Fluorene	200 J	210 U	37 J	210 U	220 U	220 U	240 U	210 U	220 U	
Indeno(1,2,3-cd)pyrene	330	210 U	78 J	69 J	400	240	51 J	210 U	79 J	
Naphthalene	170 J	210 U	45 J	210 U	220 U	220 U	240 U	210 U	220 U	
Phenanthrene	1700	65 J	270	260	650	470	62 J	210 U	220	
Pyrene	1300 J	110 J	250 J	300 J	1200	840	130 J	210 U	280	
Benzo (a) Pyrene TEQ	1017.1	186.97	336.9	317.3	1026.9	755	242.12	243.6	348.5	1,600
Metals, Total (mg/kg)										
Arsenic	15 J	16 J	21 J	6.4 J	13 J	12 J	7.2 J	21 J	13 J	68
Barium	170	86	100	220	150	140	50	40	160	46,000
Cadmium	0.47 J	0.33 J	1.8	0.37 J	0.67	0.69	0.39 J	0.075 J	0.93	210
Chromium	33	180	39	19	28	27	14	92	23	350,000
Lead	130	160	93	170	190	180	120	22	160	400
Mercury	0.16	0.077 J	0.21	0.19	0.12 J	0.12	0.15	0.11 J	0.42	70
Selenium	2 J	2 J	2.8 J	1.6 J	2.4 J	2 J	0.73 J	2.7 J	1.9 J	1,200
Silver	0.099 J	0.96 U	0.33 J	0.25 J	1.2 U	1.1 U	0.19 J	1.1 U	0.22 J	1,200

Notes:

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U-Not Detected in sample

RML- Removal Management Level. Values used by the EPA to determine where action may be necessary to protect human health and/or the environment.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 30 2016

The Honorable Loxil B. Tuck, Mayor
City of Tarrant
1605 Pinson Valley Parkway
P.O. Box 170220
Tarrant, Alabama 35217

Dear Mayor Tuck:

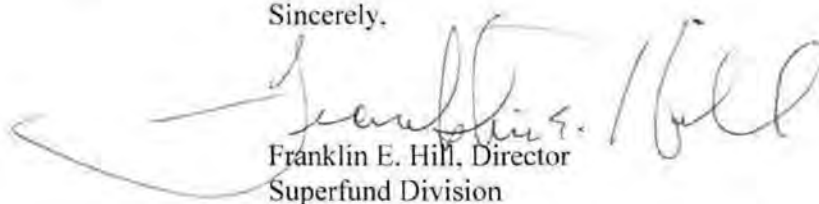
I am responding to your letter dated February 29, 2016, regarding the U.S. Environmental Protection Agency's activities at the Pinson Valley Neighborhood site (renamed the South Tarrant Neighborhood site). In this letter you again express your concerns regarding the EPA's Site Inspection (SI) conducted pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund).

As you know, the EPA prepared a sampling plan to collect the needed data to complete the SI. A copy of that sampling plan was provided to you in advance of the field sampling effort. This sampling plan was prepared in accordance with all applicable EPA guidance and policies. In addition, the field work was conducted in accordance with the Region 4 Science and Ecosystem Support Division Field Branch's Quality System and Technical Procedures. All documents related to the SI work plan and sampling are included in the SI Sampling Plan that was provided to you in advance of the field work.

The EPA has verified the data for samples collected on February 2 - 3, 2016, and I have enclosed a copy of those results. The EPA has also provided these analytical results to the property owners. Once the SI report is complete, the EPA will forward a copy of the report to you. In addition, I am happy to meet with you to discuss our findings and explain our next steps.

If you have any additional questions, please contact me at (404) 562-8599.

Sincerely,



Franklin E. Hill, Director
Superfund Division

Enclosure

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BENJAMIN S. GOLDMAN
CITY ATTORNEY

LOXCIL B. TUCK
MAYOR

LILLIAN A. KEITH
CITY CLERK

CITY OF TARRANT

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BETTY S. MIDDLEBROOKS

COUNCIL MEMBERS
DEBORAH M. MATTHEWS
CATHY ANDERSON

LAURA HORTON
MAYOR PRO TEM

March 31, 2016

VIA EMAIL & U.S. MAIL

Franklin E. Hill, Director
Superfund Division
U. S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303-8960

Re: South Tarrant Neighborhood Site

Dear Director Hill:

Thank you for forwarding the verified sampling results from the collections on February 2-3, 2016. As I am sure you will understand, I was pleased to see that every single constituent analyzed in connection with each and every surface soil sample was below the established Removal Management Level.

I look forward to receiving the SI report from you once it has been completed. In addition, I would also like to review the analytical results for the background samples as soon as those are available.

Your letter of March 30, 2016, very kindly offers a meeting to discuss the EPA's findings and to explain your next steps. In light of the favorable sampling results, it is my hope that a further meeting will not be warranted. However, if it is EPA's intent to continue with further study, testing, or analysis of the South Tarrant neighborhood site, then we should meet as soon as possible. If that is indeed the case, I believe that meeting would be most fruitful once we have had an

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opportunity to review the results of the background samples as well, to ensure that the City has a complete picture of all the data EPA used in its determination that further investigation is necessary.

If you have any questions concerning the foregoing, please do not hesitate to let me know. I very much appreciate your consideration of these matters.

Sincerely,



Loxcil B. Tuck, Mayor

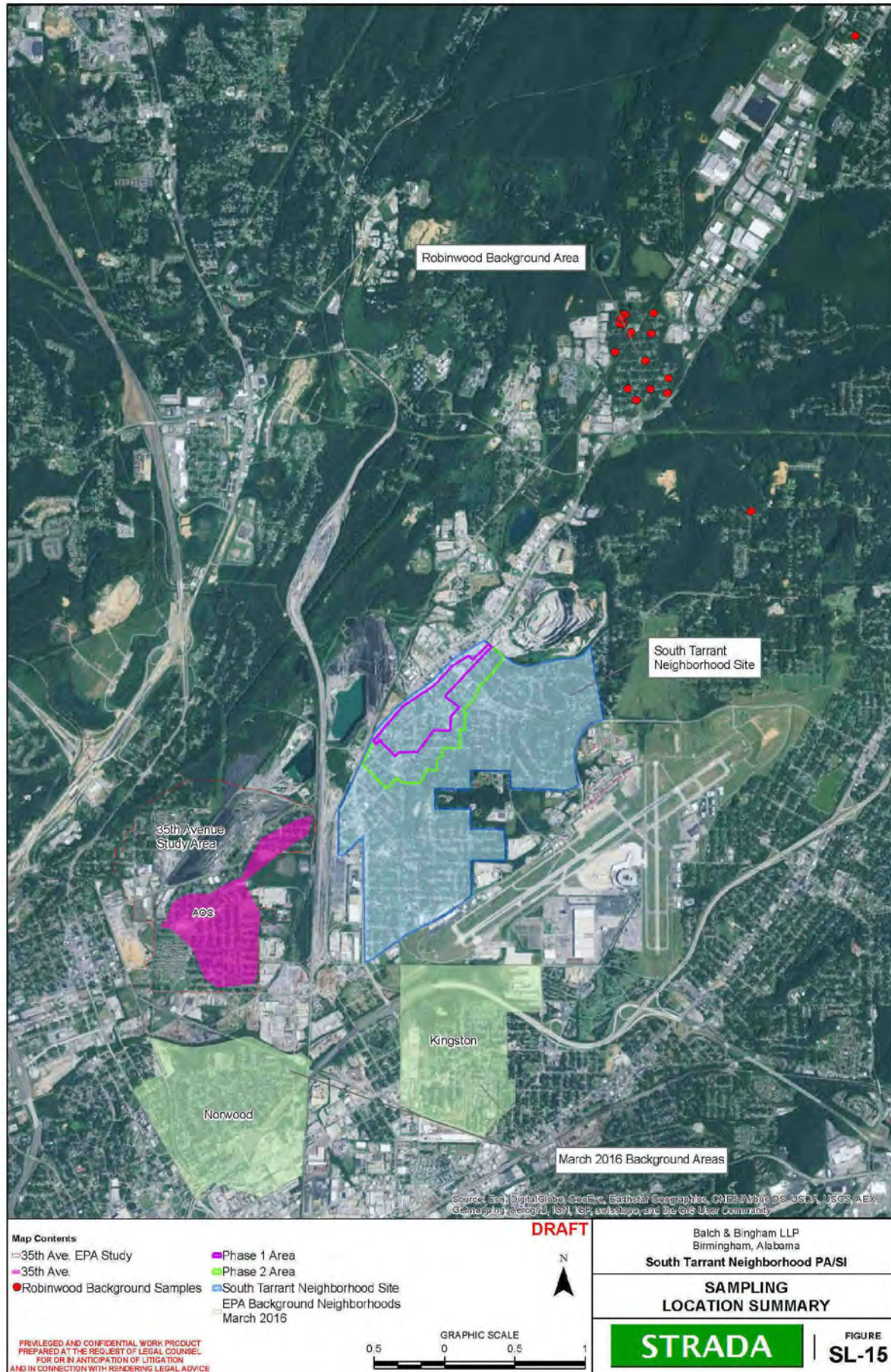
cc: Dionne Delli-Gatti, EPA Government Affairs Specialist (Via Email)
Gerald Hardy, Strada Professional Services, LLC (Via Email)
Benjamin S. Goldman, City Attorney, City of Tarrant, Alabama (Via Email)

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From: [Kirsten Bryant](#)
To: [Heard, Anne](#)
Cc: [Haley Colson](#); [Michael Hansen](#)
Subject: Re: UAB Superfund Research Program Grant - NEIHS
Date: Friday, January 29, 2016 10:01:02 AM
Attachments: [image001.png](#)

Thank you Ms. Heard for your response. EPA Region 4 will be pleased to learn the details of Dr. Antony's research and efforts to help address the ongoing issues facing the northern Birmingham communities.

Let us know if you have any questions about our Gasp or our work with the Northern Birmingham Community Coalition.

-Kirsten

On Wed, Jan 27, 2016 at 3:27 PM, Heard, Anne <Heard.Anne@epa.gov> wrote:

Hello Ms. Bryant and Dr. Antony,

Thank you for your messages. I appreciate your efforts to establish a Superfund Research Center in Birmingham, Alabama. My staff would be more than happy to meet with you. They will let you know when they plan to be in Birmingham again.

Sincerely,

V. Anne Heard | Deputy Regional Administrator, Region 4

U.S. Environmental Protection Agency | 61 Forsyth Street, SW | Atlanta, GA 30303

 [404-562-8357](tel:404-562-8357)  heard.anne@epa.gov  www.epa.gov

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From: Kirsten Bryant [mailto:kirsten@gaspgroup.org]
Sent: Tuesday, January 19, 2016 6:07 PM
To: Heard, Anne <Heard.Anne@epa.gov>
Cc: Veena B Antony <vantony@uab.edu>; Michael Hansen <michael@gaspgroup.org>; Haley Colson <Haley@gaspgroup.org>
Subject: Fwd: UAB Superfund Research Program Grant - NEIHS

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Hi Ms. Heard,

My colleague, Michael Hansen, introduced you to our organization (Gasp) via email last week.

I wanted to share the information below regarding the opportunity to establish a Superfund Research Center in Birmingham, Alabama. We encourage Region 4 to get involved and learn how this research will complement the work EPA is currently doing in the impacted communities of northern Birmingham.

If you have any questions about this effort, please don't hesitate to contact me, my colleagues or Dr. Antony.

Thank you for your time,

Kirsten Bryant

----- Forwarded message -----

From: **Kirsten Bryant** <kirsten@gaspgroup.org>

Date: Mon, Jan 11, 2016 at 9:57 AM

Subject: UAB Superfund Research Program Grant - NEIHS

To: "McTeerToney, Heather" <McTeertoney.heather@epa.gov>, "Jenkins.brandi@epa.gov" <Jenkins.brandi@epa.gov>, Cynthia Peurifoy <Peurifoy.Cynthia@epa.gov>, Denise Tennessee <Tennessee.Denise@epa.gov>, "Cc: Anita Davis" <Davis.Anita@epa.gov>, Bryant.kyle@epa.gov

Cc: Veena B Antony <vantony@uab.edu>, Chester Wallace <chesterwallace@bellsouth.net>, Thurman Thomas <thomasthurman@bellsouth.net>, Vernice Miller-Travis <vmiller-travis@skeo.com>, Haley Colson <Haley@gaspgroup.org>, Michael Hansen <michael@gaspgroup.org>

Hello everyone,

I hope you all had an enjoyable holiday break and a good start to the new year.

The purpose of this email is to introduce you all to [Dr. Veena Antony](#), (copied here) a pulmonologist in the Division of Pulmonary, Allergy & Critical Care Medicine within the School of Medicine at UAB.

As you know, UAB is a driver of research that improves the health and contributes greatly to the well being of Birmingham area citizens. Dr. Antony is leading the effort to apply for the 2016 National Institute of Environmental Health Sciences (NIEHS), Superfund Research

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Program Grant.

The research that UAB is proposing to do, through the establishment of a Superfund Research Center, will support the Birmingham community at large. The research will specifically help address challenges facing residents living in northern Birmingham communities.

Dr. Antony has met with key leaders within the community who are in support of this effort and additional research that will benefit their community's health. Dr. Antony and UAB representatives will be collaborating closely with the community in all aspects of their research and education efforts.

It is our hope that EPA Region 4 representatives will meet with Dr. Antony and support the establishment of a Superfund Research Center at UAB. The Center will complement and build on the significant and important work EPA is doing to improve the lives of Birmingham residents.

Thank you all for your continued dedication and commitment to Birmingham.

Sincerely,

Kirsten

—

Kirsten G. Bryant

Outreach Director

GASP

732 Montgomery Hwy #405

Birmingham, AL 35216

[205-541-3746](tel:205-541-3746)

GASPGroup.org

[GASP on Twitter](#)

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UAB is pleased to host this educational symposium based on its commitment to research, healthcare and technology. UAB does not support any political views related to this initiative.

This event is sponsored by the UAB School of Medicine, Division of Continuing Medical Education.

CLEAN AIR INITIATIVE

A Scientific and Educational Symposium

Friday, September 21, 2012

7:30 a.m.–8:00 a.m. Pick up conference materials & badges

8:00 a.m.–5:00 p.m. Opening remarks & lecture sessions

UAB National Alumni Society House

University of Alabama at Birmingham

1301 10th Avenue South

Birmingham, Alabama 35294

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REGISTRATION
CLOSES WEDNESDAY,
SEPTEMBER 19, 2012

For many decades, Birmingham and surrounding regions were plagued with poor air quality. The post-WWII industrial boom brought a thriving economy to Birmingham and with it, air pollution that was ranked among the worst in the nation.

In the 1970s and 1990s, industries were mandated under the federal Clean Air Acts to install pollution abatement devices and alter manufacturing processes to reduce industrial pollutants. These efforts ultimately produced significant changes in the region's visible air quality, but significant health hazards for area citizens still remain from high levels of particulate matter and other pollutants.

The symposium's focus is educational: to bring together UAB research, health care, and engineering to educate the community and healthcare providers on the health effects of air pollution; to describe current treatment programs at UAB; and to develop a dialogue with industry and community clean air advocates to find newer technologies to mitigate air quality problems.

For more information and to register, go online to
www.uab.edu/medicine/BirminghamCleanAir/

Or contact Janice L. Bernauer in Dr. Veena Antony's office at
205.934.5059 or email JLBERNAU@uab.edu

SPEAKERS AND PANEL MEMBERS

Veena B. Antony, M.D.—Professor of Medicine; Director, Environmental & Translational Medicine Program; UAB Division of Pulmonary, Allergy & Critical Care

William C. Bailey, M.D.—Professor of Medicine, Former Medical Director—Lung Health Center, UAB Division of Pulmonary, Allergy & Critical Care

Beverly H. Banister, BCHE—Director, EPA Division of Air, Pesticides and Toxics Management, Region IV, Atlanta, Georgia

Kirsten Bryant—Representative, Greater Birmingham Alliance to Stop Air Pollution (GASP)

Michelle Fanucchi, Ph.D.—Associate Professor and Interim Chair, UAB Department of Environmental Health Sciences, School of Public Health

Robert P. Kimberly, M.D.—Senior Associate Dean for Research, UAB School of Medicine, University of Alabama at Birmingham

Elizabeth Maples, Ph.D.—Assistant Professor, UAB Department of Environmental Health Sciences, School of Public Health

William J. Martin, M.D.—Associate Director for Disease Prevention and Health Promotion, Eunice Shriver National Institute of Child Health and Human Development, National Institutes of Health

Edward M. Postlethwait, Ph.D.—UAB Department of Environmental Health Sciences, School of Public Health

Roderick Royal—Council President, City of Birmingham, Birmingham, Alabama

Bharat Soni, Ph.D.—Professor and Chair, UAB Department of Mechanical Engineering, School of Engineering

Victor J. Thannickal, M.D.—Director, UAB Division of Pulmonary, Allergy and Critical Care

Mark E. Wilson, M.D.—Health Officer, Jefferson County Department of Health, Birmingham, Alabama

Program

7:30–8:00 am	Pick up conference materials and badges
8:00–8:10 am	WELCOME Robert P. Kimberly, M.D.
8:10–8:20 am	OPENING REMARKS Council President Roderick Royal, City of Birmingham, Birmingham, Alabama
8:20–8:30 am	PROGRAM DIRECTOR'S WELCOME Veena B. Antony, M.D.
8:30–9:00 am	First the Good News! Kirsten Bryant
9:00–9:15 am	Why UAB Medicine Is Involved in the Clean Air Initiative. Victor J. Thannickal, M.D.
9:15–10:00 am	PLENARY LECTURE Prenatal and Early Childhood Exposures in Adult Diseases. William J. Martin II, M.D.
10:00–10:30 am	Exhaled Breath Condensate and Early Markers of Lung Injury Secondary to Environmental Pollution. Veena B. Antony, M.D.
10:30–11:00 am	BREAK (beverages and light refreshments)
11:00–11:30 am	Focus on Environmental Insults, COPD, and Lung Cancer. William C. Bailey, M.D.
11:30 am–12:00 pm	Use of 3-Dimensional Technology in Environmental Research. Bharat Soni, Ph.D.
12:00–1:00 pm	LUNCH BREAK (lunch provided for registered attendees only)
1:00–1:30 pm	The Role of the Environmental Protection Agency in Protecting Air Quality. Beverly H. Banister, BCHE
1:30–2:00 pm	The Role of the Jefferson County Department of Health in Environmental Air Monitoring and Mitigation. Mark E. Wilson, M.D.
2:00–2:30 pm	Experimental Models for Respiratory Research. Michelle Fanucchi, Ph.D.
2:30–3:00 pm	BREAK (coffee/tea and light refreshments)
3:00–4:30 pm	PANEL DISCUSSION William Martin, Beverly Banister, Kirsten Bryant, Ed Postlethwait, Victor J. Thannickal, Veena Antony, Mark Wilson (Moderator)
4:30–5:00 pm	Training Tomorrow's Health and Safety Personnel. Elizabeth Maples, Ph.D.

Program Overview

With the creation of UAB's new **Environmental and Translational Medicine (ETM) Program** comes a multidisciplinary effort to understand air pollution problems that have long plagued this state. UAB has a strong commitment to improving the health of the people of Alabama and will use a multifaceted approach through its medical research and engineering talent to deal with health issues tied to environmental origins. The new **Environmental and Translational Medicine Program** and this symposium are part of that effort. Some environmental issues are man-made, and some are natural, including environmental organisms. Through this educational symposium, you will learn how we propose to study, educate and better understand the effects of pollution on human health from any environmental exposure.

The ETM Program has three components: to provide clinical care for patients with disease tied to environmental exposure; to educate the public on the health effects of such exposure; and to conduct research that will work to better assess the risks of exposure by identifying pollution sources, and then search for ways to mitigate or reduce exposures.

One of the first projects of the ETM Program is the **Clean Air Initiative**, a multidisciplinary effort to understand air pollution problems. It involves the UAB schools of Medicine, Public Health, and Engineering in partnership with the Jefferson County Department of Health, the Alabama chapter of the American Lung Association, and GASP (Greater Birmingham Alliance to Stop Air Pollution).

Who Should Attend

Physicians from all medical disciplines, fellows, residents, medical students, healthcare workers, the general public, community leaders, and groups and/or individuals concerned with clean air issues and how air pollution affects health. **Only those who have pre-registered online or by phone may attend. Seating is limited to first 200 registrants.**

Course Format

There will be a series of 30-minute PowerPoint lectures with question-and-answer sessions following each presentation. Speakers are asked to use language that will be understood by all attendees. Lunch is provided for registered attendees only.

FREE CONFERENCE REGISTRATION

No registration at the door

REGISTER ONLINE AT:

www.uab.edu/medicine/BirminghamCleanAir/

If you do not have internet access or have problems accessing our Web site, call Janice Bernauer at 205.934.5059 and provide the following information:

Name _____

E-mail address _____

Daytime phone _____

Degree _____

Specialty _____

Business name or institution _____

Business/institution or home address _____

City _____ State _____ ZIP _____

Will you stay for lunch? ☐ Yes ☐ No

Do you need a: ☐ Vegan meal? ☐ Vegetarian meal?

Please describe your interests. (Check all that apply)

☐ I live in the Birmingham area and have an interest in clean air.

☐ I live in an area with air pollution problems.

☐ I am a member of an environmental advocacy group.

☐ I am a member of the Birmingham business community and have an interest in air quality.

Would you like to receive information via email about UAB's Environmental and Translational Medicine Program/Clean Air Initiative, and the Environmental and Occupational Medicine Clinic? ☐ Yes ☐ No

REGISTRATION IS LIMITED TO 200

REGISTRATION CLOSSES SEPTEMBER 19, 2012

CLEAN AIR SYMPOSIUM

THT 422 • 1900 UNIVERSITY BLVD
1720 2ND AVE S
BIRMINGHAM AL 35294-0006

ACCREDITATION STATEMENT

The University of Alabama School of Medicine is accredited by the Accreditation Council for Continuing Medical Education (ACCME) to provide continuing medical education for physicians.

The University of Alabama School of Medicine designates this live activity for a maximum of **6 AMA PRA Category 1 credit(s)**[™]. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

EEOC STATEMENT

UAB is an Equal Opportunity/Affirmative Action Employer committed to fostering a diverse, equitable and family-oriented environment in which all faculty and staff can excel and achieve work/life balance irrespective of ethnicity, gender, faith, gender identity and expression, as well as sexual orientation. UAB also encourages applications from individuals with disabilities and veterans.

**LEARNING OBJECTIVES**

At the end of this scientific and educational symposium, participants should be able to:

1. Understand the science behind the effects of air pollution on the lung and its role as a direct or indirect cause of specific lung or systemic diseases such as COPD, asthma, cognitive impairment, and cancer.
2. Have increased knowledge and awareness about the latest advances in translational and environmental research at UAB that relate to air pollution.
3. Understand the role of various organizations, both local and national, that support clean air initiatives, and their advocacy roles and commitment to achieving the common goal of decreasing air pollution.

Congress of the United States

Washington, DC 20510

February 26, 2016

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Ms. Heather McTeer Toney
Regional Administrator, Region 4
Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Avenue, SW
Atlanta, GA 30303

Dear Madam Administrator and Ms. Toney:

We write to express serious concern regarding the Environmental Protection Agency's (EPA) administration of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), otherwise known as Superfund. In particular, EPA's designation of "potentially responsible parties" (PRPs) through an "air deposition" theory of liability appears to rest on questionable legal authority and may set a troubling precedent for all facilities in the United States which generate air emissions subject to the Clean Air Act and other relevant statutes.

As you are aware, on September 22, 2014, EPA proposed placing the 35th Avenue site in North Birmingham on the National Priorities List. According to the EPA Hazard Ranking System record that accompanied the proposal, "[a]ir is the primary source of deposition within the 35th Avenue site . . . from smokestacks and windblown particles from process fines and other stockpiled material." In conjunction with this air deposition theory, the agency has designated several facilities as PRPs and has informed the facilities that they may be forced to undertake cleanup actions or incur financial liability for costs associated with any cleanup of the site.

We are mindful of EPA's repeated attempts to increase the scope of federal regulatory authority, and we fear the application of the air deposition theory to supposed "arrangers" under CERCLA represents a significant expansion of the agency's Superfund enforcement powers. Arranger liability attaches to any person who disposes of hazardous substances,¹ with "disposal" defined as the "discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste *into or on any land or water* so that such solid waste or hazardous waste or any

¹ 42 U.S.C. § 9607(a)(3).

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constituent thereof may enter the environment or be *emitted into the air* or discharge into any waters.”²

A plain reading of this definition demonstrates that, to the extent air emissions may be a factor in determining arranger liability, such emissions must result directly from the discharge of solid or hazardous waste directly into or onto any land or water. In other words, industrial air emissions from lawful sources are to be regulated under the Clean Air Act, not CERCLA. However, EPA seems intent on pressing the air deposition theory in North Birmingham, while having also endorsed the theory in an amicus curiae brief filed recently in the Ninth Circuit Court of Appeals. EPA’s legal positions raise serious questions regarding the agency’s understanding of its statutory authority.

Similar reservations are expressed in the enclosed resolution, adopted jointly by the Alabama House of Representatives and Alabama Senate and approved by the Governor of Alabama on June 9, 2015. The resolution describes the 35th Avenue site proposal and provides that EPA is “attempting to impose a novel and overbroad ‘air deposition’ theory of Superfund liability which would allow EPA to pursue industrial facilities for contamination at non-contiguous properties on the basis of air emissions which are subject to the federal Clean Air Act and authorized by a valid air operating permit.” The resolution notes further that EPA’s “broad air deposition theory would allow EPA to order businesses to clean up hazardous contamination within an indefinite area before proving that the business was actually responsible.” Thus, we are especially concerned with the due process implications associated with this charge.

The resolution also suggests that EPA is pursuing the air deposition theory “as an illicit means for funding policy initiatives which are outside its regulatory authority.” Indeed, the 35th Avenue site proposal appears to be part of an “environmental justice” initiative for EPA to become a *de facto* redevelopment authority in Birmingham.³ Tellingly, the proposal follows a 2011 planning document in which EPA announced its intent to “go beyond traditional injunctive relief to stop illegal pollution . . . and, where appropriate and agreed to by defendants, to include Supplemental Environmental Projects . . . that provide benefits to communities,” as well as to “leverage benefits resulting from enforcement activities.”⁴

Finally, the resolution describes prior objections to the 35th Avenue site proposal from the Alabama Attorney General and Alabama Department of Environmental Management (ADEM). For example, ADEM repeatedly informed EPA that it did not concur with the proposed listing, as the Attorney General explained in a letter provided

² *Id.* § 6903(3) (emphasis added).

³ See Environmental Protection Agency, Region 4 Superfund, Annual Report, FY 2014 at 5.


⁴ Environmental Protection Agency, *Plan EJ 2014: Advancing Environmental Justice Through Compliance and Enforcement* (Sept. 2011).

to EPA on January 20, 2015. Under the 1997 "Fields Memorandum," ADEM's decision to withhold concurrence required EPA to work closely with the State of Alabama prior to formally proposing a site for the National Priorities List. Yet the Attorney General's comment letter indicates that EPA neglected to follow the procedure outlined in the Fields Memorandum, suggesting agency disregard for state coordination and input during the site proposal process.

EPA's air deposition theory and corresponding proposal to place the 35th Avenue site on the National Priorities List raise important legal and scientific questions and present substantial risk for businesses that may have little to no responsibility for site contamination. For these reasons, the state Legislature, Governor, and Attorney General for Alabama have each requested EPA to reconsider its position.

We believe these requests are justified, and we urge EPA to give them careful attention. Furthermore, so that we may confirm the agency's appropriate understanding of CERCLA and related legal authorities, we request your staff to schedule a meeting with our offices at the earliest opportunity to discuss the concerns raised above and in the enclosed resolution.

Yours very truly,


Jeff Sessions
United States Senator
Richard Shelby
United States Senator
Gary Palmer
United States Representative

cc: Sen. James M. Inhofe, Chairman, Committee on Environment and Public Works
Sen. Thad Cochran, Chairman, Committee on Appropriations
Sen. M. Michael Rounds, Chairman, Subcommittee on Superfund, Waste Management, and Regulatory Oversight, Committee on Environment and Public Works
Sen. Lisa Murkowski, Chairman, Subcommittee on the Interior, Environment, and Related Agencies, Committee on Appropriations

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 29 2016

The Honorable Richard Shelby
United States Senate
Washington, D.C. 20515

Dear Senator Shelby:

Thank you for your February 26, 2016, letter to the U.S. Environmental Protection Agency's Administrator, Gina McCarthy, and myself regarding the 35th Avenue Superfund Site (Site) located in Birmingham, Jefferson County, Alabama. We appreciate your attention to this issue, as well as that of the State of Alabama (State). Based on our reading of your letter, we understand you to be raising three concerns related to the EPA's proposed listing of the Site on the National Priorities Listing (NPL) pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund): (1) the Agency's designation of Potentially Responsible Parties (PRPs) through an "air deposition" theory of liability; (2) the Agency's efforts related to environmental justice; and (3) the Agency's coordination with the State prior to and following proposal of the Site to the NPL.

The EPA believes that it is critical that the State and all of the parties involved understand that the listing of a site on the NPL and enforcement against PRPs under any type of liability theory are separate and distinct activities based on different authorities under Superfund. Superfund liability is not considered when evaluating a site for listing on the NPL, nor is liability established or apportioned based on the decision to propose or finalize a site on the NPL.

With respect to your concerns about the EPA's enforcement approach and/or theories of liability against any PRP associated with the Site, unfortunately the EPA cannot engage in any level of discussions with third parties, including members of Congress, as articulated in the Memorandum from Granta Y. Nakayama, dated March 8, 2006, and titled "Restrictions on Communicating with Outside Parties Regarding Enforcement Actions" <https://www.epa.gov/enforcement/restrictions-communicating-outside-parties-regarding-enforcement-actions>. However, I am able to address the remaining concerns raised in your letter, as well as any additional questions you may have regarding the environmental conditions and the EPA response efforts to date at the Site.

On September 22, 2014, the EPA proposed to include the 35th Avenue Site on the NPL. The identification of sites for listing on the NPL is intended to guide the EPA in: a) determining which sites warrant further investigation to assess the nature and extent of the human health and environmental risks associated with a site; b) identifying what CERCLA-financed remedial actions may be appropriate; c) notifying the public of sites the EPA believes warrant further investigation; and d) serving notice to PRPs that the EPA may initiate CERCLA-financed remedial action. As the D.C. Circuit Court of Appeals has held, the NPL serves primarily as an informational tool for use by the EPA in identifying, quickly and inexpensively, those sites that appear to present a significant risk to public health or the environment. See CTS Corp. v. EPA, 759 F.3d 52, 56 (D.C. Cir. 2014); Carus Chem. Co. v. EPA, 395 F.3d 434, 441 (D.C. Cir. 2005); Wash. State Dep't of Transp. v. EPA, 917 F.2d 1309, 1310 (D.C. Cir. 1990).

In order to determine whether a site may be proposed or added to the NPL, the EPA uses the Hazard Ranking System (HRS). Sites that score greater than 28.50 based on the HRS are eligible for the NPL. The HRS score

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scientifically reflects an assessment of the relative threat to human health and the environment posed by the release or threatened release of hazardous substances at a site. The 35th Avenue site's score at the time of proposal to the NPL was 50.00. Consistent with CERCLA, this score relied solely on the Site's soil exposure pathway, due to widespread soil contamination in the residential neighborhoods of Fairmont, Collegeville and Harriman Park. This was based on results of sampling events conducted in 2013 and 2014 in these neighborhoods that revealed elevated concentrations of lead, arsenic and Benzo (a) pyrene. Environmental justice concerns are not a part of a site's HRS score or used to qualify a site for NPL listing.

In the HRS supporting materials the EPA identified several facilities as the possible sources of contamination detected in residential soil due to their proximity to the Area of Contamination (AOC), the type of plant, the processes utilized at the plant, and the history of releases contributing to the commingled contamination of the AOC over the period of many years. Identification of potential sources of contamination is a typical part of HRS supporting materials. This does not, however, establish liability. Liability is established at a site through a separate process using different CERCLA authorities. While the Agency's investigation is still underway, the presence of contaminants in the residential neighborhoods is potentially due to a number of routes, including use of solid waste as fill material, storm water runoff from facilities, continued migration of contaminants from frequent flooding in the area, and facility air emissions. These emissions occurred prior to, in absence of or in exceedance of Clean Air Act permits.

A public comment period on the proposed NPL listing was held from September 22, 2014 to January 22, 2015. The EPA received numerous public comments both in support and in opposition to a final listing, including letters from the Alabama Department of Environmental Management (ADEM) and the Alabama Attorney General. In those letters, the State requested review of the EPA's decision through the dispute resolution process outlined in the July 25, 1997 OSWER memorandum titled, "Coordinating with the States on National Priorities List Decisions - Issue Resolution Process." Prior to making a final listing decision, the EPA must consider all comments received on a proposed NPL site and respond to significant comments in writing. After consideration of all comments, if the Site still qualifies for listing on the NPL, the EPA will welcome informal deliberations with ADEM. Depending on the outcome of those deliberations, as appropriate, the EPA will follow the process outlined in the above "Issue Resolution Process" memorandum. The EPA is committed to consultations with the State prior to making any future decision, for example, to add the Site on the NPL through a final rule, to pursue additional cleanup approaches, or to withdraw the proposal to list the Site.

I believe that we share the common goal to protect and improve the quality of life for Alabama residents. As such, the EPA welcomes any further discussions on the proposed listing of the 35th Avenue site on the NPL or any other issues related to the environmental conditions and ongoing EPA response efforts at the Site. I have directed my staff to arrange for a meeting with your office at your earliest convenience. If you have additional questions please contact Allison Wise at (404) 562-8327.

Sincerely,



Heather McTeer Toney
Regional Administrator

cc: Mathy Stanislaus, OLEM

Franklin Hill, Superfund Division

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